IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 162/2001

Shri Shashikant Kalgutkar alias Sashikant Kalangutkar, aged 48 years, Seaman, r/o. Chale-Velsao. H.No.162, being the last residence C/o. Casa Central, Andrew Rodrigues, Swatantra Path, Near La Paz Hotel, Vasco da Gama, Goa. ..... Appellant.

V/s.

1. Shri Francisco V. Gracias, major in age, retired, owner of the jeep No. GDJ-8466, r/o. Mangor, Vasco-da-Gama, Goa. H.No. 2942;

2. Shri Blasco Gracias, major in age, Architect, r/o. H.No.2942, Vasco-da-Gama, Goa.

3. The New India Insurance Co. Ltd., Near Annapurna Hotel, Vasco-da-Gama, Goa.

4. Shri Saprem Ekhoshikar, major in age, unemployed, s/o. Ashok Ekhoshikar, r/o. H.No. 120, Customs Colony Quarters No.120, Headland, Sada, Harbour, Mormugao Taluka, Goa.

5. National Insurance Company Ltd., 1st Floor, Subray Chambers, Francisco Luis Gomes Road, Vasco-da-Gama, Goa.

6. Shri S. R. Deoghare, major in age, service, r/o. H.No.118, Custom Quarters, Sada, Headland, Harbour, Mormugao Taluka, Goa. ..... Respondents.

Mr. P.K. Gude, Advocate for the appellant.

Mr. E. Afonso, Advocate for the respondents No. 3 and 4.

CORAM : R.M.S. KHANDEPARKAR &
R.S. MOHITE, JJ.

DATE : AUGUST 21, 2007.

ORAL JUDGMENT : (Per MOHITE, J.)

This appeal is filed by the appellant Shashikant Kalangutkar who was the original claimant in a motor accident claim filed with the Motor Accident Claims Tribunal in the District Court at South Goa, Margao. By the present appeal, he impugns a Judgment and Award passed by the Presiding Officer, Motor Accident Claims Tribunal, Margao, by which the appellant's claim petition has been partly allowed and he has been held to be entitled to compensation of Rs. 3,32,600/-, which the respondents No.1, 2 and 3 before the Tribunal were directed to pay to the claimant, jointly and severally with pending and future interest at the rate of 9 % per annum from the date of petition until payment.

2. The only point which has been raised and argued before us is that while awarding the compensation, the Presiding Officer of the Tribunal erred in awarding a sum of Rs.30,000/- for the permanent disability suffered by him. It was contended that in an accident which occurred on 19.5.95, the appellant suffered an injury to his leg, which resulted in the shortening of his leg by one inch. Our attention was drawn to the evidence of CW.6, Dr. Bandekar

who stated that he had examined the appellant on 1.9.97 for permanent disability and had found that the permanent disability suffered by the claimant on account of shortening of his leg by one inch, was 15 %. The contention raised before us is that the Second Schedule to the Motor Vehicles Act provides for compensation for third party fatal accident/injury cases. It was contended that the evidence in the present case indicated that the age of the present appellant, at the time of the accident, was between 40 and 45 years. Relying upon the Schedule and Section 163-A of the Motor Vehicles Act, 1988, it was contended that while determining the compensation in lieu of the permanent disability suffered by the appellant, the Tribunal ought to have applied the multiplier of 15. That if such a multiplier of 15 was applied to an income of Rs.3000/- per month (after deducting 1/3rd amount from gross income of Rs.4000/- towards the expenses of the appellant), the amount of compensation that ought to have been awarded would be Rs.81,000/- and not Rs.30,000/-. The contention, therefore, was that the appellant ought to have been awarded Rs.81,000/- for the permanent disability suffered by him and not Rs.30,000/- which was awarded on this count. In this connection, the Advocate for the appellant placed reliance on a Judgment of the Apex Court in the case of ***U.P.S.R.T.C. and others vs. Trilok Chandra and others.,*** reported in 1996 Supreme Court on Accident Claims page 330. In para 15, the Apex Court had laid down the method of working out just compensation

in accident claim matters and had stressed upon the use of a multiplier.

3. Though there appears to be some substance in what the appellant contends, we find that if the Second Schedule to the Motor Vehicles Act, 1988 is applied, then the appellant was only entitled to loss of salary income for a period not exceeding 52 weeks. We, however, find that in the present case, the claimant has been awarded loss of salary income for 104 weeks, amounting to Rs.1,17,000/-. If the excess amount awarded to the appellant under head "loss of salary" is taken into account, then, in that case, the amount actually awarded on both the counts of loss of salary, as well as award for suffering a permanent disability and the amount finally awarded in the Award will have to be reduced. This, however, being a claimant's appeal and since there is no cross appeal, we do not wish to reduce the amount awarded in this appeal and, therefore, restrict ourselves to dismissing the appeal.

4. The appeal is, therefore, dismissed, with no order as to costs.

R.M.S. KHANDEPARKAR, J.

R.S. MOHITE, J.

ssm